

ASSEMBLY BILL

No. 724

Introduced by Assembly Member DeVore
(Coauthors: Assembly Members Cook, Duvall, Knight, Nestande,
Niello, and Silva)
(Coauthor: Senator Walters)

February 26, 2009

An act to amend Section 2040 of the Family Code, to amend Sections 250, 267, 279, 5000, 5302, 13111, 13206, and 13562 of, to amend and renumber Sections 5600, 5601, 5602, 5603, and 5604 of, to add Section 69 to, to add the heading of Chapter 3 (commencing with Section 5040) to Part 1 of Division 5 of, to add and repeal Part 4 (commencing with Section 5600) of Division 5 of, and to repeal the heading of Part 4 (commencing with Section 5600) of Division 5 of, the Probate Code, relating to nonprobate transfers.

LEGISLATIVE COUNSEL'S DIGEST

AB 724, as introduced, DeVore. Nonprobate transfers: revocable transfer upon death deeds.

(1) Existing law provides that a person may pass real property to a beneficiary at death by various methods including by will, intestate succession, trust, and titling the property in joint tenancy, among others.

This bill would, until January 1, 2015, create the revocable transfer on death deed (revocable TOD deed), as defined, which would transfer real property on the death of its owner without a probate proceeding. The bill would require that a person have testamentary capacity to make or revoke the deed and would require that the deed be in a statutory form provided for this purpose. The revocable TOD deed must be signed, dated, acknowledged, and recorded, as specified, to be effective.

The bill would provide, among other things, that the deed, during the owner's life, does not affect his or her ownership rights and, specifically, is part of the owner's estate for the purpose of Medi-Cal eligibility and reimbursement. The bill would void a revocable TOD deed if, at the time of the owner's death, the property is titled in joint tenancy or as community property with right of survivorship. The bill would establish priorities for creditor claims against the owner and the beneficiary of the deed in connection with the property transferred and limits on the liability of the beneficiary. The bill would establish a process for contesting the transfer of real property by a revocable TOD deed. The bill would also make conforming and technical changes. The bill would require the California Law Revision Commission to study and make recommendations regarding the revocable TOD deed to the Legislature by January 1, 2014.

(2) Existing law provides that a person who feloniously and intentionally kills a decedent is not entitled to specified property, interests, or benefits, including any gifts of personal property made in view of impending death.

This bill would specify that a person who feloniously and intentionally kills a decedent is not entitled generally to property and interests that are transferred outside of probate, including real property transferred by a revocable TOD deed.

(3) Existing law establishes simplified procedures for dealing with a decedent's estate valued under \$100,000, including authorizing the successor of the decedent to collect and distribute property due the decedent without letters of administration or awaiting probate of a will. Existing law provides that a beneficiary who receives real or personal property under these circumstances, as specified, may be liable to the estate if probate proceedings are subsequently commenced. Existing law provides, in this context, that a spouse has liability for the debts of a deceased spouse if the decedent's property is in the control of the surviving spouse. Existing law permits a court judgment to enforce liability in these instances only to the extent necessary to protect the heirs, devisees, and creditors of the decedent.

This bill would delete the reference to court judgment and provide instead that the personal representative of the estate is permitted to enforce liability only to the extent necessary to protect the heirs, devisees, and creditors of the decedent.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2040 of the Family Code is amended to
2 read:

3 2040. (a) In addition to the contents required by Section 412.20
4 of the Code of Civil Procedure, the summons shall contain a
5 temporary restraining order:

6 (1) Restraining both parties from removing the minor child or
7 children of the parties, if any, from the state without the prior
8 written consent of the other party or an order of the court.

9 (2) Restraining both parties from transferring, encumbering,
10 hypothecating, concealing, or in any way disposing of any property,
11 real or personal, whether community, quasi-community, or
12 separate, without the written consent of the other party or an order
13 of the court, except in the usual course of business or for the
14 necessities of life, and requiring each party to notify the other party
15 of any proposed extraordinary expenditures at least five business
16 days before incurring those expenditures and to account to the
17 court for all extraordinary expenditures made after service of the
18 summons on that party.

19 Notwithstanding the foregoing, nothing in the restraining order
20 shall preclude a party from using community property,
21 quasi-community property, or the party's own separate property
22 to pay reasonable attorney's fees and costs in order to retain legal
23 counsel in the proceeding. A party who uses community property
24 or quasi-community property to pay his or her attorney's retainer
25 for fees and costs under this provision shall account to the
26 community for the use of the property. A party who uses other
27 property that is subsequently determined to be the separate property
28 of the other party to pay his or her attorney's retainer for fees and
29 costs under this provision shall account to the other party for the
30 use of the property.

31 (3) Restraining both parties from cashing, borrowing against,
32 canceling, transferring, disposing of, or changing the beneficiaries
33 of any insurance or other coverage, including life, health,
34 automobile, and disability, held for the benefit of the parties and
35 their child or children for whom support may be ordered.

36 (4) Restraining both parties from creating a nonprobate transfer
37 or modifying a nonprobate transfer in a manner that affects the

1 disposition of property subject to the transfer, without the written
2 consent of the other party or an order of the court.

3 (b) Nothing in this section restrains any of the following:

4 (1) Creation, modification, or revocation of a will.

5 (2) Revocation of a nonprobate transfer, including a revocable
6 trust, pursuant to the instrument, provided that notice of the change
7 is filed and served on the other party before the change takes effect.

8 (3) Elimination of a right of survivorship to property, provided
9 that notice of the change is filed and served on the other party
10 before the change takes effect.

11 (4) Creation of an unfunded revocable or irrevocable trust.

12 (5) Execution and filing of a disclaimer pursuant to Part 8
13 (commencing with Section 260) of Division 2 of the Probate Code.

14 (c) In all actions filed on and after January 1, 1995, the summons
15 shall contain the following notice:

16 “WARNING: California law provides that, for purposes of
17 division of property upon dissolution of marriage or legal
18 separation, property acquired by the parties during marriage in
19 joint form is presumed to be community property. If either party
20 to this action should die before the jointly held community property
21 is divided, the language of how title is held in the deed (i.e., joint
22 tenancy, tenants in common, or community property) will be
23 controlling and not the community property presumption. You
24 should consult your attorney if you want the community property
25 presumption to be written into the recorded title to the property.”

26 (d) For the purposes of this section:

27 (1) “Nonprobate transfer” means an instrument, other than a
28 will, that makes a transfer of property on death, including a
29 revocable trust, pay on death account in a financial institution,
30 Totten trust, transfer on death registration of personal property,
31 *revocable transfer on death deed*, or other instrument of a type
32 described in Section 5000 of the Probate Code.

33 (2) “Nonprobate transfer” does not include a provision for the
34 transfer of property on death in an insurance policy or other
35 coverage held for the benefit of the parties and their child or
36 children for whom support may be ordered, to the extent that the
37 provision is subject to paragraph (3) of subdivision (a).

38 (e) The restraining order included in the summons shall include
39 descriptions of the notices required by paragraphs (2) and (3) of
40 subdivision (b).

SEC. 2. Section 69 is added to the Probate Code, to read:

69. “Revocable transfer on death deed” or “revocable TOD deed” means a revocable transfer on death deed as described in Section 5614.

SEC. 3. Section 250 of the Probate Code is amended to read:

250. (a) A person who feloniously and intentionally kills the decedent is not entitled to any of the following:

(1) Any property, interest, or benefit under a will of the decedent, or a trust created by or for the benefit of the decedent or in which the decedent has an interest, including any general or special power of appointment conferred by the will or trust on the killer and any nomination of the killer as executor, trustee, guardian, or conservator or custodian made by the will or trust.

(2) Any property of the decedent by intestate succession.

(3) Any of the decedent’s quasi-community property the killer would otherwise acquire under Section 101 or 102 upon the death of the decedent.

(4) Any property of the decedent under ~~Part 5 (commencing with Section 5700) of Division 5~~ *Division 5 (commencing with Section 5000)*.

(5) Any property of the decedent under Part 3 (commencing with Section 6500) of Division 6.

(b) In the cases covered by subdivision (a):

(1) The property interest or benefit referred to in paragraph (1) of subdivision (a) passes as if the killer had predeceased the decedent and Section 21110 does not apply.

(2) Any property interest or benefit referred to in paragraph (1) of subdivision (a) which passes under a power of appointment and by reason of the death of the decedent passes as if the killer had predeceased the decedent, and Section 673 *does* not apply.

(3) Any nomination in a will or trust of the killer as executor, trustee, guardian, conservator, or custodian which becomes effective as a result of the death of the decedent shall be interpreted as if the killer had predeceased the decedent.

SEC. 4. Section 267 of the Probate Code is amended to read:

267. (a) “Interest” includes the whole of any property, real or personal, legal or equitable, or any fractional part, share, or particular portion or specific assets thereof, or any estate in any such property, or any power to appoint, consume, apply, or expend

1 property, or any other right, power, privilege, or immunity relating
2 to property.

3 (b) “Interest” includes, but is not limited to, an interest created
4 in any of the following manners:

5 (1) By intestate succession.

6 (2) Under a will.

7 (3) Under a trust.

8 (4) By succession to a disclaimed interest.

9 (5) By virtue of an election to take against a will.

10 (6) By creation of a power of appointment.

11 (7) By exercise or nonexercise of a power of appointment.

12 (8) By an inter vivos gift, whether outright or in trust.

13 (9) By surviving the death of a depositor of a Totten trust
14 account or P.O.D. account.

15 (10) Under an insurance or annuity contract.

16 (11) By surviving the death of another joint tenant.

17 (12) Under an employee benefit plan.

18 (13) Under an individual retirement account, annuity, or bond.

19 (14) *Under a transfer on death beneficiary designation in a*
20 *deed or other instrument.*

21 ~~(14)~~

22 (15) Any other interest created by ~~any~~ a testamentary or inter
23 vivos instrument or by operation of law.

24 SEC. 5. Section 279 of the Probate Code is amended to read:

25 279. (a) A disclaimer to be effective shall be filed within a
26 reasonable time after the person able to disclaim acquires
27 knowledge of the interest.

28 (b) In the case of any of the following interests, a disclaimer is
29 conclusively presumed to have been filed within a reasonable time
30 if it is filed within nine months after the death of the creator of the
31 interest or within nine months after the interest becomes
32 indefeasibly vested, whichever occurs later:

33 (1) An interest created under a will.

34 (2) An interest created by intestate succession.

35 (3) An interest created pursuant to the exercise or nonexercise
36 of a testamentary power of appointment.

37 (4) An interest created by surviving the death of a depositor of
38 a Totten trust account or P.O.D. account.

39 (5) An interest created under a life insurance or annuity contract.

1 (6) An interest created by surviving the death of another joint
2 tenant.

3 (7) An interest created under an employee benefit plan.

4 (8) An interest created under an individual retirement account,
5 annuity, or bond.

6 (9) *An interest created under a transfer on death beneficiary*
7 *designation in a deed or other instrument.*

8 (c) In the case of an interest created by a living trust, an interest
9 created by the exercise of a presently exercisable power of
10 appointment, an outright inter vivos gift, a power of appointment,
11 or an interest created or increased by succession to a disclaimed
12 interest, a disclaimer is conclusively presumed to have been filed
13 within a reasonable time if it is filed within nine months after
14 whichever of the following times occurs latest:

15 (1) The time of the creation of the trust, the exercise of the power
16 of appointment, the making of the gift, the creation of the power
17 of appointment, or the disclaimer of the disclaimed property.

18 (2) The time the first knowledge of the interest is acquired by
19 the person able to disclaim.

20 (3) The time the interest becomes indefeasibly vested.

21 (d) In case of an interest not described in subdivision (b) or (c),
22 a disclaimer is conclusively presumed to have been filed within a
23 reasonable time if it is filed within nine months after whichever
24 of the following times occurs later:

25 (1) The time the first knowledge of the interest is acquired by
26 the person able to disclaim.

27 (2) The time the interest becomes indefeasibly vested.

28 (e) In the case of a future estate, a disclaimer is conclusively
29 presumed to have been filed within a reasonable time if it is filed
30 within whichever of the following times occurs later:

31 (1) Nine months after the time the interest becomes an estate in
32 possession.

33 (2) The time specified in subdivision (b), (c), or (d), whichever
34 is applicable.

35 (f) If the disclaimer is not filed within the time provided in
36 subdivision (b), (c), (d), or (e), the disclaimant has the burden of
37 establishing that the disclaimer was filed within a reasonable time
38 after the disclaimant acquired knowledge of the interest.

39 SEC. 6. Section 5000 of the Probate Code is amended to read:

1 5000. (a) A provision for a nonprobate transfer on death in an
2 insurance policy, contract of employment, bond, mortgage,
3 promissory note, certificated or uncertificated security, account
4 agreement, custodial agreement, deposit agreement, compensation
5 plan, pension plan, individual retirement plan, employee benefit
6 plan, trust, conveyance, deed of gift, *revocable transfer on death*
7 *deed*, marital property agreement, or other written instrument of
8 a similar nature is not invalid because the instrument does not
9 comply with the requirements for execution of a will, and this code
10 does not invalidate the instrument.

11 (b) Included within subdivision (a) are the following:

12 (1) A written provision that ~~money~~ *moneys* or other benefits
13 due to, controlled by, or owned by a decedent before death shall
14 be paid after the decedent's death to a person whom the decedent
15 designates either in the instrument or in a separate writing,
16 including a will, executed either before or at the same time as the
17 instrument, or later.

18 (2) A written provision that ~~money~~ *moneys* due or to become
19 due under the instrument shall cease to be payable in *the* event of
20 the death of the promisee or the promisor before payment or
21 demand.

22 (3) A written provision that any property controlled by or owned
23 by the decedent before death that is the subject of the instrument
24 shall pass to a person whom the decedent designates either in the
25 instrument or in a separate writing, including a will, executed either
26 before or at the same time as the instrument, or later.

27 (c) Nothing in this section limits the rights of creditors under
28 any other law.

29 SEC. 7. Section 5302 of the Probate Code is amended to read:

30 5302. Subject to Section ~~5600~~ 5040:

31 (a) Sums remaining on deposit at the death of a party to a joint
32 account belong to the surviving party or parties as against the estate
33 of the decedent unless there is clear and convincing evidence of a
34 different intent. If there are two or more surviving parties, their
35 respective ownerships during lifetime are in proportion to their
36 previous ownership interests under Section 5301 augmented by
37 an equal share for each survivor of any interest the decedent may
38 have owned in the account immediately before the decedent's
39 death; and the right of survivorship continues between the surviving
40 parties.

1 (b) If the account is a P.O.D. account:

2 (1) On death of one of two or more parties, the rights to any
3 sums remaining on deposit are governed by subdivision (a).

4 (2) On death of the sole party or of the survivor of two or more
5 parties, (A) any sums remaining on deposit belong to the P.O.D.
6 payee or payees if surviving, or to the survivor of them if one or
7 more die before the party, (B) if two or more P.O.D. payees
8 survive, any sums remaining on deposit belong to them in equal
9 and undivided shares unless the terms of the account or deposit
10 agreement expressly provide for different shares, and (C) if two
11 or more P.O.D. payees survive, there is no right of survivorship
12 in the event of death of a P.O.D. payee thereafter unless the terms
13 of the account or deposit agreement expressly provide for
14 survivorship between them.

15 (c) If the account is a Totten trust account:

16 (1) On death of one of two or more trustees, the rights to any
17 sums remaining on deposit are governed by subdivision (a).

18 (2) On death of the sole trustee or the survivor of two or more
19 trustees, (A) any sums remaining on deposit belong to the person
20 or persons named as beneficiaries, if surviving, or to the survivor
21 of them if one or more die before the trustee, unless there is clear
22 and convincing evidence of a different intent, (B) if two or more
23 beneficiaries survive, any sums remaining on deposit belong to
24 them in equal and undivided shares unless the terms of the account
25 or deposit agreement expressly provide for different shares, and
26 (C) if two or more beneficiaries survive, there is no right of
27 survivorship in event of death of any beneficiary thereafter unless
28 the terms of the account or deposit agreement expressly provide
29 for survivorship between them.

30 (d) In other cases, the death of any party to a ~~multiple-party~~
31 *multiparty* account has no effect on beneficial ownership of the
32 account other than to transfer the rights of the decedent as part of
33 the decedent's estate.

34 (e) A right of survivorship arising from the express terms of the
35 account or under this section, a beneficiary designation in a Totten
36 trust account, or a P.O.D. payee designation, cannot be changed
37 by will.

38 SEC. 8. The heading of Part 4 (commencing with Section 5600)
39 of Division 5 of the Probate Code is repealed.

SEC. 9. A heading is added as Chapter 3 (commencing with Section 5040) to Part 1 of Division 5 of the Probate Code, immediately preceding Section 5040, to read:

CHAPTER 3. NONPROBATE TRANSFER TO FORMER SPOUSE

SEC. 10. Section 5600 of the Probate Code is amended and renumbered to read:

~~5600.~~

5040. (a) Except as provided in subdivision (b), a nonprobate transfer to the transferor's former spouse, in an instrument executed by the transferor before or during the marriage, fails if, at the time of the transferor's death, the former spouse is not the transferor's surviving spouse as defined in Section 78, as a result of the dissolution or annulment of the marriage. A judgment of legal separation that does not terminate the status of husband and wife is not a dissolution for purposes of this section.

(b) Subdivision (a) does not cause a nonprobate transfer to fail in any of the following cases:

(1) The nonprobate transfer is not subject to revocation by the transferor at the time of the transferor's death.

(2) There is clear and convincing evidence that the transferor intended to preserve the nonprobate transfer to the former spouse.

(3) A court order that the nonprobate transfer be maintained on behalf of the former spouse is in effect at the time of the transferor's death.

(c) Where a nonprobate transfer fails by operation of this section, the instrument making the nonprobate transfer shall be treated as it would if the former spouse failed to survive the transferor.

(d) Nothing in this section affects the rights of a subsequent purchaser or encumbrancer for value in good faith who relies on the apparent failure of a nonprobate transfer under this section or who lacks knowledge of the failure of a nonprobate transfer under this section.

(e) As used in this section, "nonprobate transfer" means a provision, other than a provision of a life insurance policy, of either of the following types:

(1) A provision of a type described in Section 5000.

(2) A provision in an instrument that operates on death, other than a will, conferring a power of appointment or naming a trustee.

SEC. 11. Section 5601 of the Probate Code is amended and renumbered to read:

~~5601.~~

5042. (a) Except as provided in subdivision (b), a joint tenancy between the decedent and the decedent's former spouse, created before or during the marriage, is severed as to the decedent's interest if, at the time of the decedent's death, the former spouse is not the decedent's surviving spouse as defined in Section 78, as a result of the dissolution or annulment of the marriage. A judgment of legal separation that does not terminate the status of husband and wife is not a dissolution for purposes of this section.

(b) Subdivision (a) does not sever a joint tenancy in either of the following cases:

(1) The joint tenancy is not subject to severance by the decedent at the time of the decedent's death.

(2) There is clear and convincing evidence that the decedent intended to preserve the joint tenancy in favor of the former spouse.

(c) Nothing in this section affects the rights of a subsequent purchaser or encumbrancer for value in good faith who relies on an apparent severance under this section or who lacks knowledge of a severance under this section.

(d) For purposes of this section, property held in "joint tenancy" includes property held as community property with right of survivorship, as described in Section 682.1 of the Civil Code.

SEC. 12. Section 5602 of the Probate Code is amended and renumbered to read:

~~5602.~~

5044. (a) Nothing in this ~~part~~ chapter affects the rights of a purchaser or encumbrancer of real property for value who in good faith relies on an affidavit or a declaration under penalty of perjury under the laws of this state that states all of the following:

(1) The name of the decedent.

(2) The date and place of the decedent's death.

(3) A description of the real property transferred to the affiant or declarant by an instrument making a nonprobate transfer or by operation of joint tenancy survivorship.

(4) Either of the following, as appropriate:

(A) The affiant or declarant is the surviving spouse of the decedent.

1 (B) The affiant or declarant is not the surviving spouse of the
2 decedent, but the rights of the affiant or declarant to the described
3 property are not affected by Section ~~5600 or 5601~~ 5040 or 5042.

4 (b) A person relying on an affidavit or declaration made pursuant
5 to subdivision (a) has no duty to inquire into the truth of the matters
6 stated in the affidavit or declaration.

7 (c) An affidavit or declaration made pursuant to subdivision (a)
8 may be recorded.

9 SEC. 13. Section 5603 of the Probate Code is amended and
10 renumbered to read:

11 ~~5603.~~

12 5046. Nothing in this ~~part chapter~~ is intended to limit the
13 court's authority to order a party to a dissolution or annulment of
14 marriage to maintain the former spouse as a beneficiary on any
15 nonprobate transfer described in this ~~part chapter~~, or to preserve
16 a joint tenancy in favor of the former spouse.

17 SEC. 14. Section 5604 of the Probate Code is amended and
18 renumbered to read:

19 ~~5604.~~

20 5048. (a) This ~~part chapter~~, formerly Part 4 (commencing with
21 Section 5600), is operative on January 1, 2002.

22 (b) Except as provided in subdivision (c), this ~~part chapter~~
23 applies to an instrument making a nonprobate transfer or creating
24 a joint tenancy whether executed before, on, or after the operative
25 date of this ~~part chapter~~.

26 (c) Sections ~~5600 and 5601~~ 5040 and 5042 do not apply, and
27 the applicable law in effect before the operative date of this ~~part~~
28 ~~chapter~~ applies, to an instrument making a nonprobate transfer or
29 creating a joint tenancy in either of the following circumstances:

30 (1) The person making the nonprobate transfer or creating the
31 joint tenancy dies before the operative date of this ~~part chapter~~.

32 (2) The dissolution of marriage or other event that terminates
33 the status of the nonprobate transfer beneficiary or joint tenant as
34 a surviving spouse occurs before the operative date of this part.

35 SEC. 15. Part 4 (commencing with Section 5600) is added to
36 Division 5 of the Probate Code, to read:

1 PART 4. REVOCABLE TRANSFER ON DEATH DEED

2
3 CHAPTER 1. GENERAL PROVISIONS

4
5 Article 1. Preliminary Provisions

6
7 5600. (a) This part applies to a revocable transfer on death
8 deed made by a transferor who dies on or after January 1, 2010,
9 whether the deed was executed or recorded before, on, or after
10 January 1, 2010.

11 (b) Nothing in this part invalidates an otherwise valid transfer
12 under Section 5602.

13 (c) This part shall remain in effect only until January 1, 2015,
14 and as of that date is repealed, unless a later enacted statute, that
15 is enacted before January 1, 2015, deletes or extends that date. The
16 repeal of this part pursuant to this subdivision shall not affect the
17 validity or effect of a revocable transfer on death deed that is
18 executed before January 1, 2015, and shall not affect the authority
19 of the transferor to revoke a transfer on death deed by recording
20 a signed and notarized instrument that is substantially in the form
21 specified in Section 5644.

22 5602. (a) This part does not preclude use of any other method
23 of conveying real property that is permitted by law and that has
24 the effect of postponing enjoyment of the property until the death
25 of the owner.

26 (b) This part does not invalidate a deed of real property,
27 otherwise effective to convey title to the property, that is not
28 recorded until after the death of the owner.

29 5604. (a) Except as provided in subdivision (b), nothing in
30 this part affects the application to a revocable transfer on death
31 deed of any other statute governing a nonprobate transfer on death,
32 including, but not limited to, any of the following provisions that
33 by its terms or intent would apply to a nonprobate transfer on death:

- 34 (1) Division 2 (commencing with Section 100).
35 (2) Part 1 (commencing with Section 5000) of this division.
36 (3) Division 10 (commencing with Section 20100).
37 (4) Division 11 (commencing with Section 21101).

38 (b) Notwithstanding subdivision (a), a provision of another
39 statute governing a nonprobate transfer on death does not apply

1 to a revocable transfer on death deed to the extent this part provides
2 a contrary rule.

3
4 Article 2. Definitions

5
6 5606. Unless the provision or context otherwise requires, the
7 definitions in this article govern the construction of this part.

8 5608. “Beneficiary” means a person named in a revocable
9 transfer on death deed as transferee of the property.

10 5610. “Real property” means the fee or an interest in real
11 property. The term includes, but is not limited to, any of the
12 following interests in real property:

13 (a) A leasehold.

14 (b) An interest in a common interest development within the
15 meaning of Section 1351 of the Civil Code.

16 (c) An easement, license, permit, or other right in property to
17 the extent the right is both (1) a recordable interest in property and
18 (2) transferable on death of the owner of the right.

19 5612. “Recorded” has the meaning provided in Section 1170
20 of the Civil Code.

21 5614. (a) “Revocable transfer on death deed” means an
22 instrument created pursuant to this part that does all of the
23 following:

24 (1) Makes a donative transfer of real property to a named
25 beneficiary.

26 (2) Operates on the transferor’s death.

27 (3) Remains revocable until the transferor’s death.

28 (b) A revocable transfer on death deed may also be known as
29 a “revocable TOD deed.”

30 5616. “Transferor” means an owner of real property who makes
31 a revocable transfer on death deed of the property.

32
33 CHAPTER 2. EXECUTION AND REVOCATION

34
35 Article 1. Execution

36
37 5620. An owner of real property who has testamentary capacity
38 may make a revocable transfer on death deed of the property.

39 5622. (a) The transferor shall identify the beneficiary by name
40 in a revocable transfer on death deed.

1 (b) The transferor may name more than one beneficiary. If there
2 is more than one beneficiary, they take the property as tenants in
3 common, in equal shares.

4 (c) The transferor may name as beneficiary the trustee of a trust
5 even if the trust is revocable.

6 5624. (a) Except as provided in subdivision (b), a revocable
7 transfer on death deed is not effective unless the transferor signs
8 and dates the deed and acknowledges the deed before a notary
9 public.

10 (b) A revocable transfer on death deed may be signed and dated
11 in the transferor's name by a person other than the transferor at
12 the transferor's direction and in the transferor's presence, but shall
13 be acknowledged by the transferor.

14 5626. (a) A revocable transfer on death deed is not effective
15 unless the deed is recorded on or before 60 days after the date it
16 was executed.

17 (b) The transferor is not required to deliver a revocable transfer
18 on death deed to the beneficiary during the transferor's life.

19 (c) The beneficiary is not required to accept a revocable transfer
20 on death deed from the transferor during the transferor's life.

21 5628. (a) If a revocable transfer on death deed is recorded for
22 the same property for which another revocable transfer on death
23 deed is recorded, the later executed deed is the operative instrument
24 and its recordation revokes the earlier executed deed.

25 (b) Revocation of a revocable transfer on death deed does not
26 revive an instrument earlier revoked by recordation of that deed.

27
28 Article 2. Revocation
29

30 5630. A transferor who has testamentary capacity may revoke
31 a revocable transfer on death deed at any time.

32 5632. (a) An instrument revoking a revocable transfer on death
33 deed shall be executed and recorded before the transferor's death
34 in the same manner as execution and recordation of a revocable
35 transfer on death deed.

36 (b) Joinder, consent, or agreement of, or notice to, the
37 beneficiary is not required for revocation of a revocable transfer
38 on death deed.

Article 3. Statutory Forms

5642. A revocable transfer on death deed shall be in the form provided in this section or Section 5643.

(a) The face of the form shall be in substantially the following form:

SIMPLE REVOCABLE TRANSFER ON DEATH (TOD) DEED

(California Probate Code Section 5642)

Recording Requested By:

When Recorded Mail This Deed To

Name:

Address:

Assessor's Parcel Number: Space Above For Recorder's Use

This document is exempt from documentary transfer tax under Rev. & Tax. Code § 11930. This document is exempt from preliminary change of ownership report under Rev. & Tax. Code § 480.3.

IMPORTANT NOTICE: THIS DEED MUST BE RECORDED ON OR BEFORE 60 DAYS AFTER THE DATE IT IS SIGNED

Use this deed to transfer the property described below directly to your named beneficiaries when you die. YOU SHOULD CAREFULLY READ ALL OF THE INFORMATION ON THE OTHER SIDE OF THIS FORM. You may wish to consult an attorney before using this deed. It may have results that you do not want. Provide only the information asked for in the form. DO NOT INSERT ANY OTHER INFORMATION OR INSTRUCTIONS. This form MUST be RECORDED on or before 60 days after the date it is signed or it will not be effective.

PROPERTY DESCRIPTION

Print the address or other legal description of the property affected by this deed:

BENEFICIARY(IES)

Print the NAME(S) of the person(s) who will receive the property on your death (DO NOT use general terms like "my children"):

TRANSFER ON DEATH

I transfer all of my interest in the described property to the named beneficiary(ies) on my death. I may revoke this deed. When recorded, this deed revokes any TOD deed that I made before signing this deed.

Sign and print your name below:

_____ Date _____

NOTE: This deed only transfers MY ownership share of the property. The deed does NOT transfer the share of any co-owner of the property. Any co-owner who wants to name a TOD beneficiary must complete and RECORD a SEPARATE deed.

ACKNOWLEDGMENT OF NOTARY

State of California)
County of _____)

On _____ before me, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

(b) The reverse side of a form executed under this section shall be in substantially the following form:

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

1 WHAT DOES THE TOD DEED DO? When you die, the identified property
2 will transfer to your named beneficiary without probate. The TOD deed has
3 no effect until you die. You can revoke it at any time.

4 HOW DO I USE THE TOD DEED? Complete this form. Have it notarized.
5 RECORD the form in the county where the property is located. The form
6 MUST be recorded on or before 60 days after the date you sign it or the deed
7 has no effect.

8 HOW DO I “RECORD” THE FORM? Take the completed and notarized
9 form to the County Recorder for the county in which the property is located.
10 Follow the instructions given by the County Recorder to make the form part
11 of the official property records.

12 WHAT IF I SHARE OWNERSHIP OF THE PROPERTY? This form only
13 transfers YOUR share of the property. If a co-owner also wants to name a
14 TOD beneficiary, that co-owner must complete and RECORD a separate form.

15 CAN I REVOKE THE TOD DEED IF I CHANGE MY MIND? Yes. You
16 may revoke the TOD deed at any time. No one, including your beneficiary,
17 can prevent you from revoking the deed.

18 HOW DO I REVOKE THE TOD DEED? There are three ways to revoke
19 a recorded TOD deed: (1) Complete, notarize, and RECORD a revocation
20 form. (2) Create and RECORD a new TOD deed, trust, or other estate planning
21 document that disposes of the same property. (3) Sell or give away the property
22 before your death and RECORD the deed. A TOD deed can only affect property
23 that you own when you die.

24 IF I CREATE A NEW TOD DEED, TRUST, OR OTHER ESTATE
25 PLANNING DOCUMENT THAT DISPOSES OF THE SAME PROPERTY,
26 DOES THAT AUTOMATICALLY REVOKE A RECORDED TOD DEED?
27 No. If you want the new document to revoke a recorded TOD deed, the new
28 document MUST be signed and dated after the deed you wish to revoke and
29 it MUST be RECORDED. To avoid any doubt you may wish to RECORD a
30 TOD deed revocation form before creating the new instrument.

31 I AM BEING PRESSURED TO COMPLETE THIS FORM. WHAT
32 SHOULD I DO? Do NOT complete this form unless you freely choose to do
33 so. If you are being pressured to dispose of your property in a way that you
34 do not want, you may want to alert a family member, friend, the district
35 attorney, or a senior service agency.

36 DO I NEED TO TELL MY BENEFICIARY ABOUT THE TOD DEED?
37 No. But, secrecy can cause later complications and might make it easier for
38 others to commit fraud.

39 WHAT DOES MY BENEFICIARY NEED TO DO WHEN I DIE? Your
40 beneficiary must RECORD evidence of your death (Prob. Code § 210), and

1 file a change in ownership notice (Rev. & Tax. Code § 480). If you received
2 Medi-Cal benefits, your beneficiary must notify the State Department of Health
3 Care Services of your death and provide a copy of your death certificate (Prob.
4 Code § 215).

5 WHAT IF I NAME MORE THAN ONE BENEFICIARY? Your
6 beneficiaries will become co-owners in equal shares. If you want a different
7 result, you should not use this form. You MUST name your beneficiaries
8 individually. You MAY NOT use general terms to describe beneficiaries, such
9 as “my children.”

10 WHAT IF A BENEFICIARY DIES BEFORE I DO? You should probably
11 create and RECORD a new deed. Otherwise, the property will transfer
12 according to the general rules on failed gifts, which may not meet your needs.
13 See Prob. Code §§ 21110–21111.

14 WHAT IS THE EFFECT OF A TOD DEED ON PROPERTY THAT I
15 OWN AS JOINT TENANCY OR COMMUNITY PROPERTY WITH RIGHT
16 OF SURVIVORSHIP? If you are the first joint tenant or spouse to die, the
17 deed is VOID and has no effect. The property transfers to your joint tenant or
18 surviving spouse and not according to this deed. If you are the last joint tenant
19 or spouse to die, the deed takes effect and controls the ownership of your
20 property when you die. If you do not want these results, do not use this form.
21 The deed does NOT transfer the share of a co-owner of the property. Any
22 co-owner who wants to name a TOD beneficiary must complete and RECORD
23 a SEPARATE deed.

24 CAN I ADD OTHER CONDITIONS ON THE FORM? No. If you do, your
25 beneficiary may need to go to court to clear title.

26 IS PROPERTY TRANSFERRED BY THE TOD DEED SUBJECT TO
27 MY DEBTS? Yes.

28 DOES THE TOD DEED HELP ME TO AVOID GIFT AND ESTATE
29 TAXES? No.

30 HOW DOES THE TOD DEED AFFECT PROPERTY TAXES? The TOD
31 deed has no effect on your property taxes until your death. At that time,
32 property tax law applies as it would to any other change of ownership.

33 DOES THE TOD DEED AFFECT MY ELIGIBILITY FOR MEDI-CAL?
34 No.

35 AFTER MY DEATH, WILL MY HOME BE LIABLE FOR
36 REIMBURSEMENT OF THE STATE FOR MEDI-CAL EXPENDITURES?
37 If your estate is subject to reimbursement, any property transferred by a TOD
38 deed will also be subject to reimbursement.
39

1 5643. A revocable transfer on death deed shall be in the form
2 provided in this section or Section 5642.

3 (a) The face of a form executed under this section shall be in
4 substantially the following form:

5
6 **REVOCABLE TRANSFER ON DEATH (TOD) DEED WITH LIFE**
7 **ESTATE**

8 (California Probate Code Section 5643)
9

10 Recording Requested By:

11 When Recorded Mail This Deed To

12 Name:

13 Address:

14 Assessor's Parcel Number: Space Above For Recorder's Use
15

16 This document is exempt from documentary transfer tax under Rev. & Tax.
17 Code § 11930. This document is exempt from preliminary change of ownership
18 report under Rev. & Tax. Code § 480.3.
19

20 **IMPORTANT NOTICE: THIS DEED MUST BE RECORDED ON OR**
21 **BEFORE 60 DAYS AFTER THE DATE IT IS SIGNED**

22 Use this deed to create a life estate in a named life tenant, with a remainder
23 interest in the named remainder beneficiaries. When you die, the identified
24 property will transfer to the "life tenant" for the duration of that person's life.
25 After that person's death, the property will transfer to your "remainder
26 beneficiary(ies)."

27 This is a complex arrangement that may cause disputes between the life
28 tenant and remainder beneficiaries. You should consult an attorney before
29 choosing to use this form.

30 YOU SHOULD CAREFULLY READ ALL OF THE INFORMATION ON
31 THE OTHER SIDE OF THIS FORM. Provide only the information asked for
32 in the form. DO NOT INSERT ANY OTHER INFORMATION OR
33 INSTRUCTIONS. This form MUST be RECORDED on or before 60 days
34 after the date it is signed or it will not be effective.
35

36 **PROPERTY DESCRIPTION**

37 Print the address or other legal description of the property affected by this
38 deed:
39
40

LIFE TENANT

Print the NAME of the life tenant: _____

REMAINDER BENEFICIARY(IES)

Print the NAME(S) of the remainder beneficiaries (DO NOT use general terms like “my children”):

TRANSFER ON DEATH

I transfer all of my interest in the described property on my death, as follows: a life estate to the person named as life tenant, with a remainder to the person(s) named as remainder beneficiary(ies). I may revoke this deed. When recorded, this deed revokes any TOD deed that I made before signing this deed.

Sign and print your name below:

_____ Date _____

NOTE: This deed only transfers MY ownership share of the property. The deed does NOT transfer the share of any co-owner of the property. Any co-owner who wants to name a TOD beneficiary must complete and RECORD a SEPARATE deed.

ACKNOWLEDGMENT OF NOTARY

State of California)
County of _____)

On _____ before me, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

1 WITNESS my hand and official seal.

2 Signature _____ (Seal)

3
4 (b) The reverse side of the form shall be in substantially the
5 following form:

6
7 **COMMON QUESTIONS ABOUT THE USE OF THIS FORM**

8
9 WHAT DOES THE TOD DEED DO? When you die, the identified property
10 will transfer to the “life tenant” for the duration of that person’s life. After that
11 person’s death, the property will transfer to your “remainder beneficiary(ies).”
12 Probate is not required for a transfer under this deed. The deed has no effect
13 until you die. You can revoke it at any time.

14 HOW DO I USE THE TOD DEED? Complete this form. Have it notarized.
15 RECORD the form in the county where the property is located. The form
16 MUST be recorded on or before 60 days after the date you sign it or the deed
17 has no effect.

18 HOW DO I “RECORD” THE FORM? Take the completed and notarized
19 form to the County Recorder for the county in which the property is located.
20 Follow the instructions given by the County Recorder to make the form part
21 of the official property records.

22 WHAT IF I SHARE OWNERSHIP OF THE PROPERTY? This form only
23 transfers YOUR share of the property. If a co-owner also wants to name a
24 TOD beneficiary, that co-owner must complete and RECORD a separate form.

25 CAN I REVOKE THE TOD DEED IF I CHANGE MY MIND? Yes. You
26 may revoke the TOD deed at any time. No one, including your beneficiary,
27 can prevent you from revoking the deed.

28 HOW DO I REVOKE THE TOD DEED? There are three ways to revoke
29 a recorded TOD deed: (1) Complete, notarize, and RECORD a revocation
30 form. (2) Create and RECORD a new TOD deed, trust, or other estate planning
31 document that disposes of the same property. (3) Sell or give away the property
32 before your death and RECORD the deed. A TOD deed can only affect property
33 that you own when you die.

34 IF I CREATE A NEW TOD DEED, TRUST, OR OTHER ESTATE
35 PLANNING DOCUMENT THAT DISPOSES OF THE SAME PROPERTY,
36 DOES THAT AUTOMATICALLY REVOKE A RECORDED TOD DEED?
37 No. If you want the new document to revoke a recorded TOD deed, the new
38 document MUST be signed and dated after the deed you wish to revoke and
39 it MUST be RECORDED. To avoid any doubt, you may wish to RECORD a
40 TOD deed revocation form before creating the new instrument.

1 I AM BEING PRESSURED TO COMPLETE THIS FORM. WHAT
2 SHOULD I DO? Do NOT complete this form unless you freely choose to do
3 so. If you are being pressured to dispose of your property in a way that you
4 do not want, you may want to alert a family member, friend, the district
5 attorney, or a senior service agency.

6 DO I NEED TO TELL MY BENEFICIARY ABOUT THE TOD DEED?
7 No. But, secrecy can cause later complications and might make it easier for
8 others to commit fraud.

9 WHAT DOES MY BENEFICIARY NEED TO DO WHEN I DIE? Your
10 beneficiary must RECORD evidence of your death (Prob. Code § 210), and
11 file a change in ownership notice (Rev. & Tax. Code § 480). If you received
12 Medi-Cal benefits, your beneficiary must notify the State Department of Health
13 Care Services of your death and provide a copy of your death certificate (Prob.
14 Code § 215).

15 WHAT IF I NAME MORE THAN ONE REMAINDER BENEFICIARY?
16 Your remainder beneficiaries will become co-owners in equal shares. If you
17 want a different result, you should not use this form. You MUST name your
18 beneficiaries individually. You MAY NOT use general terms to describe
19 beneficiaries, such as “my children.” You MAY NOT name more than one
20 life tenant.

21 WHAT IF A BENEFICIARY DIES BEFORE I DO? You should probably
22 create and RECORD a new deed. Otherwise, the property will transfer
23 according to the general rules on failed gifts, which may not meet your needs.
24 See Prob. Code §§ 21110-21111.

25 WHAT IS THE EFFECT OF A TOD DEED ON PROPERTY THAT I
26 OWN AS JOINT TENANCY OR COMMUNITY PROPERTY WITH RIGHT
27 OF SURVIVORSHIP? If you are the first joint tenant or spouse to die, the
28 deed is VOID and has no effect. The property transfers to your joint tenant or
29 surviving spouse and not according to this deed. If you are the last joint tenant
30 or spouse to die, the deed takes effect and controls the ownership of your
31 property when you die. If you do not want these results, do not use this form.
32 The deed does NOT transfer the share of a co-owner of the property. Any
33 co-owner who wants to name a TOD beneficiary must complete and RECORD
34 a SEPARATE deed.

35 CAN I ADD OTHER CONDITIONS ON THE FORM? No. If you do, your
36 beneficiary may need to go to court to clear title.

37 IS PROPERTY TRANSFERRED BY THE TOD DEED SUBJECT TO
38 MY DEBTS? Yes.

39 DOES THE TOD DEED HELP ME TO AVOID GIFT AND ESTATE
40 TAXES? No.

1 HOW DOES THE TOD DEED AFFECT PROPERTY TAXES? The TOD
2 deed has no effect on your property taxes until your death. At that time,
3 property tax law applies as it would to any other change of ownership.

4 DOES THE TOD DEED AFFECT MY ELIGIBILITY FOR MEDI-CAL?
5 No.

6 AFTER MY DEATH, WILL MY HOME BE LIABLE FOR
7 REIMBURSEMENT OF THE STATE FOR MEDI-CAL EXPENDITURES?
8 If your estate is subject to reimbursement, any property transferred by a TOD
9 deed will also be subject to reimbursement.

10
11 5644. A transferor may revoke a revocable transfer on death
12 deed by an instrument in substantially the following form:

13
14 **Revocation of**
15 **Revocable Transfer on Death (TOD) Deed**
16 [California Probate Code Section 5600]
17

18 Recording Requested By:

19
20 When Recorded Mail This Deed To

21 Name:

22 Address:

23 Assessor's Parcel Number: Space Above For Recorder's Use

24 This deed revocation is exempt from documentary transfer tax under Rev.
25 & Tax. Code §11930. This deed revocation is exempt from preliminary change
26 of ownership report under Rev. & Tax. Code § 480.3.

27
28 **IMPORTANT NOTICE: THIS FORM MUST BE RECORDED**
29

30 This revocation form MUST be RECORDED before your death or it will
31 not be effective. This revocation form only affects a transfer on death deed
32 that YOU made. A transfer on death deed made by a co-owner of your property
33 is not affected by this revocation form. A co-owner who wants to revoke a
34 transfer on death deed that he/she made must complete and RECORD a
35 SEPARATE revocation form.

36
37 **PROPERTY DESCRIPTION**
38

39 Print the address or other legal description of the property affected by this
40 revocation:

REVOCATION

I revoke any TOD deed to transfer the described property that I executed before executing this form.

SIGNATURE AND DATE

Sign and print your name below:

_____ Date _____

ACKNOWLEDGMENT OF NOTARY

State of California)
County of _____)

On _____ before me, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

1 Signature _____ (Seal)

2
3
4 CHAPTER 3. EFFECT

5
6 Article 1. General Provisions

7
8 5650. During the transferor's life, execution and recordation
9 of a revocable transfer on death deed:

10 (a) Does not affect the ownership rights of the transferor, and
11 the transferor or the transferor's agent or other fiduciary may
12 convey, assign, contract, encumber, or otherwise deal with the
13 property, and the property is subject to process of the transferor's
14 creditors, as if no revocable transfer on death deed were executed
15 or recorded.

16 (b) Does not create any legal or equitable right in the beneficiary,
17 and the property is not subject to process of the beneficiary's
18 creditors.

19 (c) Does not transfer or convey any right, title, or interest in the
20 property.

21 5652. (a) A revocable transfer on death deed transfers all of
22 the transferor's interest in the property to the beneficiary on the
23 transferor's death.

24 (b) A revocable transfer on death deed may condition the
25 beneficiary's right to the property on an intervening life estate, but
26 may not otherwise create a future interest in a beneficiary.

27 (c) Property is transferred by a revocable transfer on death deed
28 subject to any limitation on the transferor's interest that is of record
29 at the transferor's death including, but not limited to, a lien,
30 encumbrance, easement, lease, or other instrument affecting the
31 transferor's interest, whether recorded before or after recordation
32 of the revocable transfer on death deed. The holder of rights under
33 that instrument may enforce those rights against the property
34 notwithstanding its transfer by the revocable transfer on death
35 deed.

36 (d) A revocable transfer on death deed transfers the property
37 without covenant or warranty of title.

38 5654. (a) For the purpose of determination of eligibility for
39 health care under Chapter 7 (commencing with Section 14000) or
40 Chapter 8 (commencing with Section 14200) of Part 3 of Division

1 9 of the Welfare and Institutions Code, execution and recordation
2 of a revocable transfer on death deed is not a lifetime transfer of
3 the property.

4 (b) For the purpose of a claim of the State Department of Health
5 Care Services under Section 14009.5 of the Welfare and Institutions
6 Code, property transferred by a revocable transfer on death deed
7 is a part of the estate of the decedent, and the beneficiary is a
8 recipient of the property by distribution or survival.

9 5656. For the purpose of application of the property taxation
10 and documentary transfer tax provisions of the Revenue and
11 Taxation Code:

12 (a) Execution and recordation of, or revocation of, a revocable
13 transfer on death deed of real property is not a change in ownership
14 of the property and does not require declaration or payment of a
15 documentary transfer tax or filing of a preliminary change of
16 ownership report.

17 (b) Transfer of real property on the death of the transferor by a
18 revocable transfer on death deed is a change in ownership of the
19 property.

20 21 Article 2. Other Instruments and Forms of Tenure 22

23 5660. If a revocable transfer on death deed recorded on or
24 before 60 days after the date it was executed and another instrument
25 both purport to dispose of the same property:

26 (a) If the other instrument is not recorded before the transferor's
27 death, the revocable transfer on death deed is the operative
28 instrument.

29 (b) If the other instrument is recorded before the transferor's
30 death and makes a revocable disposition of the property, the later
31 executed of the revocable transfer on death deed or the other
32 instrument is the operative instrument.

33 (c) If the other instrument is recorded before the transferor's
34 death and makes an irrevocable disposition of the property, the
35 other instrument and not the revocable transfer on death deed is
36 the operative instrument.

37 5664. If, at the time of the transferor's death, title to the
38 property described in the revocable transfer on death deed is held
39 in joint tenancy or as community property with right of
40 survivorship, the revocable transfer on death deed is void. The

1 transferor's interest in the property is governed by the right of
2 survivorship and not by the revocable transfer on death deed.

3 5666. (a) Chapter 2 (commencing with Section 5010) of Part
4 1 applies to a revocable transfer on death deed of community
5 property.

6 (b) For the purpose of application of Chapter 2 (commencing
7 with Section 5010) of Part 1 to a revocable transfer on death deed
8 of community property, written consent to the deed, revocation of
9 written consent to the deed, or modification of the deed, is
10 ineffective unless recorded within the time required by that chapter
11 for execution or service of the written consent, revocation, or
12 modification.

13 5668. A revocable transfer on death deed of community
14 property with right of survivorship is subject to Section 5666,
15 relating to a revocable transfer on death deed of community
16 property.

17 18 Article 3. Creditors 19

20 5670. Notwithstanding any other statute governing priorities
21 among creditors, a creditor of the transferor whose right is
22 evidenced at the time of the transferor's death by an encumbrance
23 or lien of record on property transferred by a revocable transfer
24 on death deed has priority against the property over a creditor of
25 the beneficiary, regardless of whether the beneficiary's obligation
26 was created before or after the transferor's death and regardless
27 of whether the obligation is secured or unsecured, voluntary or
28 involuntary, recorded or unrecorded.

29 5672. Each beneficiary is personally liable to the extent
30 provided in Section 5674 for the unsecured debts of the transferor.
31 Any such debt may be enforced against the beneficiary in the same
32 manner as it could have been enforced against the transferor if the
33 transferor had not died. In any action based on the debt, the
34 beneficiary may assert any defense, cross-complaint, or setoff that
35 would have been available to the transferor if the transferor had
36 not died. Nothing in this section permits enforcement of a claim
37 that is barred under Part 4 (commencing with Section 9000) of
38 Division 7. Section 366.2 of the Code of Civil Procedure applies
39 in an action under this section.

1 5674. (a) A beneficiary is not liable under Section 5672 if
2 proceedings for the administration of the transferor's estate are
3 commenced and the beneficiary satisfies the requirements of
4 Section 5676.

5 (b) The aggregate of the personal liability of a beneficiary under
6 Section 5672 shall not exceed the sum of the following:

7 (1) The fair market value at the time of the transferor's death
8 of the property received by the beneficiary pursuant to the
9 revocable transfer on death deed, less the amount of any liens and
10 encumbrances on the property at that time.

11 (2) The net income the beneficiary received from the property.

12 (3) If the property has been disposed of, interest on the fair
13 market value of the property from the date of disposition at the
14 rate payable on a money judgment. For the purposes of this
15 paragraph, "fair market value of the property" has the same
16 meaning as defined in paragraph (2) of subdivision (a) of Section
17 5676.

18 5676. (a) Subject to subdivisions (b), (c), and (d), if
19 proceedings for the administration of the transferor's estate are
20 commenced, each beneficiary is liable for:

21 (1) The restitution to the transferor's estate of the property the
22 beneficiary received pursuant to the revocable transfer on death
23 deed if the beneficiary still has the property, together with (A) the
24 net income the beneficiary received from the property and (B) if
25 the beneficiary encumbered the property after the transferor's
26 death, the amount necessary to satisfy the balance of the
27 encumbrance as of the date the property is restored to the estate.

28 (2) The restitution to the transferor's estate of the fair market
29 value of the property if the beneficiary no longer has the property,
30 together with (A) the net income the beneficiary received from the
31 property prior to disposing of it and (B) interest from the date of
32 disposition at the rate payable on a money judgment on the fair
33 market value of the property. For the purposes of this paragraph,
34 the "fair market value of the property" is the fair market value,
35 determined as of the time of the disposition of the property, of the
36 property the beneficiary received pursuant to the revocable transfer
37 on death deed, less the amount of any liens and encumbrances on
38 the property at the time of the transferor's death.

39 (b) Subject to subdivision (c), if proceedings for the
40 administration of the transferor's estate are commenced and a

1 beneficiary made a significant improvement to the property
2 received by the beneficiary pursuant to the revocable transfer on
3 death deed, the beneficiary is liable for whichever of the following
4 the transferor's estate elects:

5 (1) The restitution of the property, as improved, to the estate of
6 the transferor upon the condition that the estate reimburse the
7 beneficiary for (A) the amount by which the improvement increases
8 the fair market value of the property restored, determined as of the
9 time of restitution, and (B) the amount paid by the beneficiary for
10 principal and interest on any liens or encumbrances that were on
11 the property at the time of the transferor's death.

12 (2) The restoration to the transferor's estate of the fair market
13 value of the property, determined as of the time of the transferor's
14 death, less the amount of any liens and encumbrances on the
15 property at that time, together with interest on the net amount at
16 the rate payable on a money judgment running from the time of
17 the transferor's death.

18 (c) The property and amount required to be restored to the estate
19 under this section shall be reduced by any property or amount paid
20 by the beneficiary to satisfy a liability under Section 5672.

21 (d) An action to enforce the liability under this section may be
22 brought only by the personal representative of the estate of the
23 transferor. Whether or not the personal representative brings an
24 action under this section, the personal representative may enforce
25 the liability only to the extent of the beneficiary's liability under
26 Section 5672. The reasonable cost of proceeding under this section
27 shall be reimbursed as an extraordinary service under Sections
28 10801 and 10811. Action under this section is optional. A personal
29 representative is never required to act under this section.

30 (e) An action to enforce the liability under this section is forever
31 barred three years after the transferor's death. The three-year period
32 specified in this subdivision is not tolled for any reason. Nothing
33 in this subdivision affects the requirements of Section 215, any
34 law that may toll the limitations period for the commencement of
35 a Medi-Cal estate recovery action, or the time for commencement
36 of an action by the Department of Health Care Services under
37 Section 14009.5 of the Welfare and Institutions Code.

CHAPTER 4. EFFECTUATION OF TRANSFER

5680. (a) The beneficiary may establish the fact of the transferor's death under the procedure provided in Chapter 2 (commencing with Section 210) of Part 4 of Division 2. For the purpose of this subdivision, the beneficiary is a person empowered by statute to act on behalf of the transferor or the transferor's estate within the meaning of Section 103526 of the Health and Safety Code.

(b) For the purpose of filing the change in ownership statement required by Section 480 of the Revenue and Taxation Code, the beneficiary is a transferee of real property by reason of death.

(c) For the purpose of giving the notice to the Director of Health Care Services provided for in Section 215, the beneficiary is a beneficiary of the transferor.

(d) The beneficiary is liable to the transferor's estate for prorated estate and generation-skipping transfer taxes to the extent provided in Division 10 (commencing with Section 20100).

5682. If both of the following conditions are satisfied, a person dealing with a beneficiary of a revocable transfer on death deed of real property shall have the same rights and protections as the person would have if the beneficiary had been named as a distributee of the property in an order for distribution of the transferor's estate that had become final:

(a) The person acted in good faith and for a valuable consideration.

(b) An affidavit of death was recorded for the property under Chapter 2 (commencing with Section 210) of Part 4 of Division 2.

CHAPTER 5. CONTEST

5690. (a) The transferor's personal representative or an interested person may, under Part 19 (commencing with Section 850) of Division 2, contest the validity of a transfer of property by a revocable transfer on death deed.

(b) The proper county for a contest proceeding is the proper county for proceedings concerning administration of the transferor's estate, whether or not proceedings concerning

1 administration of the transferor's estate have been commenced at
2 the time of the contest.

3 (c) On commencement of a contest proceeding, the contestant
4 may record a lis pendens in the county in which the revocable
5 transfer on death deed is recorded.

6 5692. (a) A contest proceeding may not be commenced before
7 the transferor's death.

8 (b) A contest proceeding shall be commenced within the earlier
9 of the following times:

10 (1) Three years after the transferor's death.

11 (2) One year after the beneficiary establishes the fact of the
12 transferor's death under the procedure provided in Chapter 2
13 (commencing with Section 210) of Part 4 of Division 2.

14 5694. If the court in a contest proceeding determines that a
15 transfer of property by a revocable transfer on death deed is invalid,
16 the court shall order the following relief:

17 (a) If the proceeding was commenced and a lis pendens was
18 recorded within 120 days after the transferor's death, the court
19 shall void the deed and order transfer of the property to the person
20 entitled to it.

21 (b) If the proceeding was not commenced and a lis pendens was
22 not recorded within 120 days after the transferor's death, the court
23 shall grant appropriate relief but the court order shall not affect
24 the rights in the property of a purchaser or encumbrancer for value
25 and in good faith acquired before commencement of the proceeding
26 and recordation of a lis pendens.

27 5696. Nothing in this chapter limits the application of principles
28 of fraud, undue influence, duress, mistake, or other invalidating
29 cause to a transfer of property by a revocable transfer on death
30 deed.

31 SEC. 16. Section 13111 of the Probate Code is amended to
32 read:

33 13111. (a) Subject to the provisions of this section, if
34 proceedings for the administration of the decedent's estate are
35 commenced in this state, or if the decedent's personal
36 representative has consented to the payment, transfer, or delivery
37 of the decedent's property under this chapter and the personal
38 representative later requests that the property be restored to the
39 estate, each person to whom payment, delivery, or transfer of the
40 decedent's property is made under this chapter is liable for:

1 (1) The restitution of the property to the estate if the person still
2 has the property, together with (A) the net income the person
3 received from the property and (B) if the person encumbered the
4 property after it was delivered or transferred to the person, the
5 amount necessary to satisfy the balance of the encumbrance as of
6 the date the property is restored to the estate.

7 (2) The restitution to the estate of the fair market value of the
8 property if the person no longer has the property, together with
9 (A) the net income the person received from the property and (B)
10 interest on the fair market value of the property from the date of
11 disposition at the rate payable on a money judgment. For the
12 purposes of this subdivision, the “fair market value of the property”
13 is the fair market value, determined as of the time of the disposition
14 of the property, of the property paid, delivered, or transferred to
15 the person under this chapter, less any liens and encumbrances on
16 the property at that time.

17 (b) Subject to subdivision (c) and subject to any additional
18 liability the person has under Sections 13109 to 13112, inclusive,
19 if the person fraudulently secured the payment, delivery, or transfer
20 of the decedent’s property under this chapter, the person is liable
21 under this section for restitution to the decedent’s estate of three
22 times the fair market value of the property. For the purposes of
23 this subdivision, the “fair market value of the property” is the fair
24 market value, determined as of the time the person liable under
25 this subdivision presents the affidavit or declaration under this
26 chapter, of the property paid, delivered, or transferred to the person
27 under this chapter, less the amount of any liens and encumbrances
28 on the property at that time.

29 (c) The property and amount required to be restored to the estate
30 under this section shall be reduced by any property or amount paid
31 by the person to satisfy a liability under Section 13109 or 13110.

32 (d) An action to enforce the liability under this section may be
33 brought only by the personal representative of the estate of the
34 decedent. ~~In Whether or not the personal representative brings an~~
35 ~~action to enforce the liability under this section, the court’s~~
36 ~~judgment~~ *personal representative* may enforce the liability only
37 to the extent necessary to protect the interests of the heirs, devisees,
38 and creditors of the decedent.

39 (e) An action to enforce the liability under this section is forever
40 barred three years after presentation of the affidavit or declaration

1 under this chapter to the holder of the decedent's property, or three
2 years after the discovery of the fraud, whichever is later. The
3 three-year period specified in this subdivision is not tolled for any
4 reason.

5 (f) In the case of a nondomiciliary decedent, restitution under
6 this section shall be made to the estate in an ancillary
7 administration proceeding.

8 SEC. 17. Section 13206 of the Probate Code is amended to
9 read:

10 13206. (a) Subject to subdivisions (b), (c), (d), and (e), if
11 proceedings for the administration of the decedent's estate are
12 commenced, or if the decedent's personal representative has
13 consented to use of the procedure provided by this chapter and the
14 personal representative later requests that the property be restored
15 to the estate, each person who is designated as a successor of the
16 decedent in a certified copy of an affidavit issued under Section
17 13202 is liable for:

18 (1) The restitution to the decedent's estate of the property the
19 person took under the certified copy of the affidavit if the person
20 still has the property, together with (A) the net income the person
21 received from the property and (B) if the person encumbered the
22 property after the certified copy of the affidavit was issued, the
23 amount necessary to satisfy the balance of the encumbrance as of
24 the date the property is restored to the estate.

25 (2) The restitution to the decedent's estate of the fair market
26 value of the property if the person no longer has the property,
27 together with (A) the net income the person received from the
28 property prior to disposing of it and (B) interest from the date of
29 disposition at the rate payable on a money judgment on the fair
30 market value of the property. For the purposes of this paragraph,
31 the "fair market value of the property" is the fair market value,
32 determined as of the time of the disposition of the property, of the
33 property the person took under the certified copy of the affidavit,
34 less the amount of any liens and encumbrances on the property at
35 the time the certified copy of the affidavit was issued.

36 (b) Subject to subdivision (d), if the person fraudulently executed
37 or filed the affidavit under this chapter, the person is liable under
38 this section for restitution to the decedent's estate of three times
39 the fair market value of the property. For the purposes of this
40 subdivision, the "fair market value of the property" is the fair

1 market value, determined as of the time the certified copy of the
2 affidavit was issued, of the property the person took under the
3 certified copy of the affidavit, less the amount of any liens and
4 encumbrances on the property at that time.

5 (c) Subject to subdivision (d), if proceedings for the
6 administration of the decedent's estate are commenced and a person
7 designated as a successor of the decedent in a certified copy of an
8 affidavit issued under Section 13202 made a significant
9 improvement to the property taken by the person under the certified
10 copy of the affidavit in the good faith belief that the person was
11 the successor of the decedent to that property, the person is liable
12 for whichever of the following the decedent's estate elects:

13 (1) The restitution of the property, as improved, to the estate of
14 the decedent upon the condition that the estate reimburse the person
15 making restitution for (A) the amount by which the improvement
16 increases the fair market value of the property restored, determined
17 as of the time of restitution, and (B) the amount paid by the person
18 for principal and interest on any liens or encumbrances that were
19 on the property at the time the certified copy of the affidavit was
20 issued.

21 (2) The restoration to the decedent's estate of the fair market
22 value of the property, determined as of the time of the issuance of
23 the certified copy of the affidavit under Section 13202, less the
24 amount of any liens and encumbrances on the property at that time,
25 together with interest on the net amount at the rate payable on a
26 money judgment running from the date of the issuance of the
27 certified copy of the affidavit.

28 (d) The property and amount required to be restored to the estate
29 under this section shall be reduced by any property or amount paid
30 by the person to satisfy a liability under Section 13204 or 13205.

31 (e) An action to enforce the liability under this section may be
32 brought only by the personal representative of the estate of the
33 decedent. ~~In Whether or not the personal representative brings an~~
34 ~~action to enforce the liability under this section, the court's~~
35 ~~judgment~~ *personal representative* may enforce the liability only
36 to the extent necessary to protect the interests of the heirs, devisees,
37 and creditors of the decedent.

38 (f) An action to enforce the liability under this section is forever
39 barred three years after the certified copy of the affidavit is issued
40 under Section 13202, or three years after the discovery of the fraud,

1 whichever is later. The three-year period specified in this
2 subdivision is not tolled for any reason.

3 SEC. 18. Section 13562 of the Probate Code is amended to
4 read:

5 13562. (a) Subject to subdivisions (b), (c), and (d), if
6 proceedings for the administration of the decedent's estate are
7 commenced, the surviving spouse is liable for:

8 (1) The restitution to the decedent's estate of the decedent's
9 property if the surviving spouse still has the decedent's property,
10 together with (A) the net income the surviving spouse received
11 from the decedent's property and (B) if the surviving spouse
12 encumbered the decedent's property after the date of death, the
13 amount necessary to satisfy the balance of the encumbrance as of
14 the date the decedent's property is restored to the estate.

15 (2) The restitution to the decedent's estate of the fair market
16 value of the decedent's property if the surviving spouse no longer
17 has the decedent's property, together with (A) the net income the
18 surviving spouse received from the decedent's property prior to
19 disposing of it and (B) interest from the date of disposition at the
20 rate payable on a money judgment on the fair market value of the
21 decedent's property. For the purposes of this paragraph, the "fair
22 market value of the decedent's property" is the fair market value
23 of the decedent's property, determined as of the time of the
24 disposition of the decedent's property, less the amount of any liens
25 and encumbrances on the decedent's property at the time of the
26 decedent's death.

27 (b) Subject to subdivision (c), if proceedings for the
28 administration of the decedent's estate are commenced and the
29 surviving spouse made a significant improvement to the decedent's
30 property in the good faith belief that the surviving spouse was the
31 successor of the decedent to the decedent's property, the surviving
32 spouse is liable for whichever of the following the decedent's
33 estate elects:

34 (1) The restitution of the decedent's property, as improved, to
35 the estate of the decedent upon the condition that the estate
36 reimburse the surviving spouse for (A) the amount by which the
37 improvement increases the fair market value of the decedent's
38 property restored, valued as of the time of restitution, and (B) the
39 amount paid by the surviving spouse for principal and interest on

1 any liens or encumbrances that were on the decedent's property
2 at the time of the decedent's death.

3 (2) The restoration to the decedent's estate of the fair market
4 value of the decedent's property, valued as of the time of the
5 decedent's death, excluding the amount of any liens and
6 encumbrances on the decedent's property at that time, together
7 with interest on the net amount at the rate payable on a money
8 judgment running from the date of the decedent's death.

9 (c) The property and amount required to be restored to the estate
10 under this section shall be reduced by any property or amount paid
11 by the surviving spouse to satisfy a liability under Chapter 3
12 (commencing with Section 13550).

13 (d) An action to enforce the liability under this section may be
14 brought only by the personal representative of the estate of the
15 decedent. ~~In Whether or not the personal representative brings an~~
16 ~~action to enforce the liability~~ under this section, ~~the court's~~
17 ~~judgment~~ *personal representative* may enforce the liability only
18 to the extent necessary to protect the interests of the heirs, devisees,
19 and creditors of the decedent.

20 (e) An action to enforce the liability under this section is forever
21 barred three years after the death of the decedent. The three-year
22 period specified in this subdivision is not tolled for any reason.

23 SEC. 19. (a) The California Law Revision Commission shall
24 study the effect of California's revocable transfer on death deed
25 set forth in Part 4 (commencing with Section 5600) of Division 5
26 of the Probate Code and make recommendations in this regard.
27 The commission shall report all of its findings to the Legislature
28 on or before January 1, 2014.

29 (b) In the study required by subdivision (a), the commission
30 shall address all of the following:

31 (1) Whether the revocable transfer on death deed is working
32 effectively.

33 (2) Whether the revocable transfer on death deed should be
34 continued.

35 (3) Whether the revocable transfer on death deed is subject to
36 misuse or misunderstanding.

37 (4) What changes should be made to the revocable transfer on
38 death deed or the law associated with the deed to improve its
39 effectiveness and to avoid misuse or misunderstanding.

- 1 (5) Whether the revocable transfer on death deed has been used
- 2 to perpetuate financial abuse on property owners and, if so, how
- 3 the law associated with the deed should be changed to minimize
- 4 this abuse.